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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
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9 WILLIAM G. MARTINEZ, *et al.*,
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11 Plaintiffs,
12 v.
13 SAFEGUARD PROPERTIES, INC.,
14 Defendant.

CASE NO: 13-CV-0892 W (BLM)

ORDER STRIKING PLAINTIFF'S
OPPOSITION [DOC. 7] AND
GRANTING DEFENDANT'S
MOTION TO TRANSFER VENUE
[DOC. 3]

15 On April 19, 2013, Defendant Safeguard Properties, Inc. ("Safeguard") filed a
16 motion to transfer venue. (*Mot. Transfer Venue* [Doc. 3].) The hearing for the motion
17 was set for June 3, 2013. (*Id.* at 1.) Therefore, Plaintiffs' opposition was due no later
18 than May 20, 2013. S.D. Cal. Civ. R. 7.1(e.2). However, Plaintiffs filed their
19 opposition on May 28, 2013. (*Opp'n* [Doc. 7.]) Because the opposition was untimely
20 and filed without an accompanying motion for enlargement of time, and because
21 Plaintiffs have made no showing of excusable neglect, the Court **STRIKES** the
22 opposition. See Wood v. Santa Barbara Chamber of Commerce, Inc., 705 F.2d 1515,
23 1519 (9th Cir. 1983).

24 The Court decides the matter on the papers submitted and without oral
25 argument. See S.D. Cal. Civ. R. 7.1(d.1). For the following reasons, the Court
26 **GRANTS** Safeguard's motion.

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1 **I. BACKGROUND**

2 This case centers on Safeguard's allegedly negligent conduct in connection with
3 a property located at 2120 Ramrod Avenue, #1111, Henderson, Nevada (the
4 "property"). (*Compl.* [Doc. 1-1] 2¹.) According to the Plaintiffs, and belying
5 Defendant's name, "Safeguard. . .was negligent in safeguarding the property." (*Id.*)
6 Allegedly, Safeguard negligently caused water damage to the property, which caused
7 damage to the property itself. (*Id.*) Plaintiff Susie Holmes, who lives immediately
8 above the property, also claims that the mold that grew in the apartment due to the
9 water damage made her sick. (*Id.*)

10 On or about March 11, 2013, Plaintiffs commenced this suit for negligence
11 against Safeguard in the Superior Court of California, County of San Diego. (See
12 *Compl.*) On April 12, 2013, Safeguard removed the case to this Court. (*Removal* [Doc.
13 1].) Then, on April 19, 2013, Safeguard filed a motion to transfer venue to the United
14 States District Court for the District of Nevada. (*Mot. Transfer Venue* 2,3.) Plaintiffs
15 failed to timely oppose.

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17 **II. LEGAL STANDARD**

18 "For the convenience of parties and witnesses, in the interest of justice, a district
19 court may transfer a civil action to any other district or division where it might have
20 been brought." 28 U.S.C. § 1404. Under § 1404(a), the district court has discretion
21 "to adjudicate motions to transfer according to an 'individualized, case-by-case
22 consideration of convenience and fairness.'" Jones v. GNC Franchising, Inc., 211 F.3d
23 495, 498 (9th Cir. 2000) (citing Stewart Org. v. Ricoh Corp., 487 U.S. 22, 29 (1998)).
24 In adjudicating such motions, the court weighs multiple factors to determine whether
25 transfer is appropriate, including "(1) the location where the relevant agreements were
26 negotiated and executed, (2) the state that is most familiar with the governing law, (3)

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28 ¹ Plaintiff's Complaint is not consecutively paginated. Therefore, the Court references
the Complaint with the page numbers assigned by the CM/ECF docketing system.

1 the plaintiff's choice of forum, (4) the respective parties' contacts with the forum, (5)
 2 the contacts relating to the plaintiff's cause of action in the chosen forum, (6) the
 3 differences in the costs of litigation in the two forums, (7) the availability of compulsory
 4 process to compel attendance of unwilling non-party witnesses, and (8) the ease of
 5 access to sources of proof." Jones, 211 F.3d at 498-99. "The defendant must make a
 6 strong showing of inconvenience to warrant upsetting the plaintiff's choice of forum."
 7 Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 841 (9th Cir. 1986).

8 9 **III. DISCUSSION**

10 Here, Safeguard argues that "a transfer of venue is justified in the 'interest of
 11 justice.'" (*Mot. Transfer Venue* 4.) In light of the following analysis, the Court finds
 12 that transfer is appropriate.

13 First, Safeguard's alleged negligence occurred in Nevada, which will require
 14 application of Nevada law. (*Compl.* 2.) The district court in Nevada is much more
 15 "familiar with the governing law." So this factor favors transfer.

16 Second, the parties have numerous contacts in Nevada: Plaintiff Holmes is a
 17 citizen of Nevada, Plaintiff Martinez owns the property in Nevada, Safeguard does
 18 business in Nevada. (*Compl.* 2.) Thus, this factor favors transfer.

19 Third, Plaintiff's have elected the Southern District of California as their forum.
 20 Thus, this factor cuts against transfer.

21 Fourth, Safeguard's alleged negligence is directly connected with the parties'
 22 contacts in Nevada. (*Compl.* 2.) Plaintiff Holmes is claiming injuries suffered in
 23 Nevada. (*Id.*) Also, Plaintiff Martinez owns the property which is the subject of this
 24 litigation. (*Id.*) Finally, Safeguard's acts and omissions in Nevada are being reviewed
 25 in this matter. (*Id.*) Thus, this factor favors transfer.

26 Fifth, a large number of the witnesses to be called, including the last contractors
 27 to inspect the property and provide plumbing services therein, are located in Nevada.
 28 (*Decl. Steve Meyer* [Doc 3-2] ¶¶ 9-12.) Moreover, the property itself is located in

1 Nevada. (*Compl.* 2.) Also, in order to establish the alleged loss Plaintiff Martinez
2 suffered, he will have to have the property inspected, which necessarily must occur in
3 Nevada. In addition, Plaintiff Holmes' doctors are most likely located in Nevada as
4 well. In short, the "sources of proof" in this matter are more easily accessed in Nevada.
5 So this factor favors transfer.

6 Sixth, Plaintiffs have not pled any "relevant agreements," so this factor is neutral.

7 Neither party has addressed the differences in costs of litigating this matter in
8 each venue or the availability of compulsory process to compel the attendance of non-
9 party witnesses. Therefore, in light of Safeguard's burden of proof, these factors cut
10 against transfer.

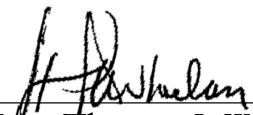
11 On balance, the Court finds transfer warranted. All parties have significant and
12 relevant contacts in Nevada, all of the witnesses identified by Safeguard are in Nevada,
13 and the property is in Nevada.

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15 **IV. CONCLUSION**

16 In light of the foregoing, this Court **GRANTS** Safeguard's motion to transfer
17 venue, and **TRANSFERS** this matter to the United States District Court for the
18 District of Nevada. The clerk of the court shall close this case.

19 **IT IS SO ORDERED.**

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21 DATED: June 4, 2013

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24 Hon. Thomas J. Whelan
25 United States District Judge
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